

Rules of the South Florida Water Management District

**CONSUMPTIVE
USE
Chapter 40E-2, F.A.C.**



Amended June 9, 2003

**CHAPTER 40E-2
CONSUMPTIVE USE**

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40E-2.010 — Review of Consumptive Use Permit Applications.

Consumptive use permit applications are processed pursuant to Section 120.60, F.S., Part VI of Chapter 40E-1, F.A.C., and Chapter 28-107, F.A.C.

Specific Authority 120.54(5), 120.60 FS.

Law Implemented 120.54(5), 120.60 FS.

History — New 7-2-98.

40E-2.011 — Policy and Purpose.

(1) It is the policy of the District to control all water uses within its boundaries, pursuant to the provisions of Chapter 373, Florida Statutes, and Chapter 62-40 and Title 40E, F.A.C.

(2) The rules in this chapter implement the comprehensive water use permit system contemplated in Part II of Chapter 373, Florida Statutes.

(3) Additional rules relating to water use are found in Chapter 40E-8 (Minimum Flows and Levels), Chapter 40E-20 (General Water Use Permits), Chapter 40E-21 (The Water Shortage Plan), Chapter 40E-22 (Regional Water Shortage Plans) and Chapter 40E-23 (Water Resource Caution Areas).

(4) Standards for the construction, repair and abandonment of water wells are found in Chapter 40E-3 (Water Wells) and Chapter 40E-30 (General Permits for Water Wells).

Specific Authority 373.044, 373.113, 373.171 FS.

Law Implemented 373.103(1), 373.203, 373.216, 373.249 FS.

History — New 9-3-81, Formerly 16K-2.01, Amended 7-4-82, 2-24-85, 11-18-91, 8-1-02.

40E-2.031 — Implementation.

(1) The effective dates for the water use permitting program established in this chapter are:

(a) If the use or withdrawal of water exceeds 100,000 gallons per day, the effective dates are:

1. January 12, 1977, for the portion of the District formerly within the Ridge and Lower Gulf Coast Water Management District,
2. March 2, 1974, for the remainder of the District;

(b) If the use or withdrawal of water does not exceed 100,000 gallons per day, the effective date is January 14, 1979.

(2) The effective dates specified in subsection (1) are used to determine the two year period provided in Section 373.266, Florida Statutes, for existing water users to file initial applications.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.103(1), 373.216, 373.226 FS.

History — New 9-3-81, Formerly 16K-2.011.

40E-2.041 — Permits Required.

(1) Unless expressly exempt by law or District rule, a water use permit must be obtained from the District prior to any use or withdrawal of water.

(2) The District issues water use permits in two forms, individual water use permits and general water use permits. An individual water use permit may be

obtained by meeting the requirements of this chapter. Chapter 40E-20 provides the requirements for qualifying for a general water use permit.

(3) Under certain circumstances the Board or the Executive Director may issue a temporary water use permit pursuant to Rule 40E-2.441 and Section 373.244, Florida Statutes.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.103(1), 373.219, 373.244 FS.

History — New 9-3-81, Formerly 16K-2.03(1), (2).

40E-2.051 — Exemptions.

No permit is required under Rule 40E-2.041 for the following water uses:

- (1) Water used strictly for domestic use at a single family dwelling or duplex provided that the water is obtained from one withdrawal facility for each single family dwelling or duplex.
- (2) Water used strictly for fire fighting purposes, and
- (3) Water used at a single family dwelling or duplex including but not limited to home lawn and ornamental irrigation, car washing, and other incidental uses provided that the water is obtained from one withdrawal facility for each single family dwelling or duplex.

Specific Authority 373.044, 373.113, 373.171 FS.

Law Implemented 373.219 FS.

History — New 9-3-81, Formerly 16K-2.025, Amended 2-24-85, 4-20-94.

40E-2.091 Publications Incorporated by Reference.

The "Basis of Review for Water Use Permit Applications within the South Florida Water Management District - June 2003" is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Specific Authority: §373.044, 373.113, 373.171, FS

Law Implemented: §373.042, 373.0421, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, FS

History -- New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-04, 11-26-95, 7-11-96, 4-9-97, 12-10-07, 9-10-01, 12-19-01, 8-1-02, 6-9-03.

40E-2.101 — Content of Application.

(1) Applications for permits required by this chapter shall be filed with the District. The application shall contain:

- (a) The following parts of Form 0645 Water Use Permit Applications, as incorporated by reference in Rule 40E-1.659;
 - 1. Part RC-1A Administrative Information for Water Use Permit Applications;
 - 2. Part RC-1W Application for a Water Use Permit;
- (b) The appropriate permit application processing fee required by Rule 40E-1.607;
- (c) The information required in Subsection 373.229(1), Florida Statutes; and

- (d) Information sufficient to show that the use meets the criteria and conditions established in Rule 40E-2.301.
- (2) The application must be signed by the applicant or the authorized agent of the applicant.

Specific Authority 373.044, 373.113, 373.171 FS.

Law Implemented 373.103(1), 373.219, 373.223, 373.229 FS.

History — New 9-3-81, Amended 12-1-82, 2-24-85, 11-21-89, Repromulgated 1-4-93, Amended 4-20-94, 8-01-02.

40E-2.301 — Conditions for Issuance of Permits.

- (1) In order to obtain a permit, permit renewal, or permit modification under this chapter, an applicant must give reasonable assurances that the proposed water use at the time the permit application is deemed complete:
 - (a) Will not cause harmful saline water intrusion;
 - (b) Will not harm offsite land uses;
 - (c) Will not cause environmental harm;
 - (d) Will not cause pollution of the water resources;
 - (e) Is otherwise a reasonable-beneficial use as defined in subsection 373.019(13), Florida Statutes, with consideration given to the factors set forth in Rule 62-40.410, F.A.C.
 - (f) Will not interfere with presently existing legal uses;
 - (g) Is in accordance with water transport provisions of Sections 373.223(3) and 373.229(3), and the Water Resource Implementation Rule 62-40.422, F.A.C.

- (h) Makes use of a reclaimed water source unless the applicant, in any geographic location, demonstrates that its use is either not economically, environmentally or technically feasible; or in areas not designated as Water Resource Caution Areas pursuant to Chapter 40E-23, F.A.C., the applicant demonstrates reclaimed water is not readily available;
 - (i) Meets the established minimum flows and levels and implementation provisions in Chapter 373, F.S., this Chapter and Chapter 40E-8, F.A.C.; and
 - (j) Is consistent with Sections 373.016, 373.036, Florida Statutes, and otherwise is consistent with the public interest as prescribed by Chapter 373 and this Chapter.
- (2) In order to satisfy the conditions for permit issuance in subsection (1), the permit applicant must provide reasonable assurances that the criteria in the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District" , incorporated by reference in Subsection 40E-2.091, are met.

Specific Authority 373.044, 373.113, 373.171 FS.

Law Implemented 373.023, 373.042, 373.0421, 373.185, 373.219, 373.223, 373.226, 373.236 FS.

History — New 9-3-81, Formerly 16K-2.035(2), Amended 2-24-85, 1-4-93, 4-20-94, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 8-01-02.

40E-2.321 — Duration of Permit.

(1) Unless revoked or otherwise modified, the duration of a water use permit issued pursuant to this chapter is the lesser of:

(a) The time period for which the permit applicant demonstrates that water will be available to meet the projected demands and during which the conditions for issuance of a permit in Rule 40E-2.301 will be met.

(b) The time period for which the permit applicant demonstrates legal control.

(2) In addition to the duration limitation in subsection (1) above, the permit durations for specific uses shall not exceed the following time periods:

(a) For public water supply and industrial water uses, the period shall not exceed 10 years.

(b) For dewatering water uses, the period shall not exceed 3 years.

(c) For irrigation uses, the period shall not exceed the basin expiration date as specified in the document described in Rule 40E-2.091 as applicable to the location of the project.

(d) For aquifer remediations, the period shall not exceed that required to complete the operation as specified in the Remedial Action Plan approved by the state or local agency having legal jurisdiction over such activities or 20 years, whichever is less.

(e) For all other uses, the period shall not exceed 10 years.

Specific Authority 373.044, 373.113, 373.171 FS.

Law Implemented 373.236 FS.

History — New 9-3-81, Amended 2-24-85, 4-20-94, 7-11-96.

40E-2.331 — Modification of Permits.

(1) A permittee shall apply to the District for approval of any modification of an unexpired permit pursuant to Section 373.239, F. S.

(2) Applications for modification, except letter modifications issued pursuant to subsection (4), shall contain the information required in Rule 40E-2.101, will be evaluated using the criteria specified in Rule 40E-2.301 and will be subject to the limiting conditions specified in Rule 40E-2.381. Modifications shall be approved if criteria in Rule 40E-2.301 are met.

(3) Proposed increases in allocation will be treated as new uses to the extent the proposed allocation exceeds the existing allocation.

(4) (a) Modification of an existing water use permit shall be approved by letter, provided the permit is in compliance with all applicable limiting conditions and the modification request:

1. does not result in an increase in the amount of the permit allocation;
2. does not modify the existing permit expiration date, except that when the permit duration is based upon the current lease expiration date, the permit duration shall be extended by letter modification to the new lease date, but shall not exceed the applicable permit duration pursuant to Rule 40E-2.321;
3. does not potentially interfere with any presently existing legal use of water, cause environmental harm, saltwater intrusion, pollution of the water resources, harm to offsite land uses, or does

not otherwise raise issues requiring a Staff determination of whether such impacts would occur pursuant to the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District", incorporated by reference in Rule 40E-2.091; and,

4. does not change the permitted withdrawal source(s) or use classification.

5. does not result in a modification of the permit which must be approved by the Governing Board pursuant to Section 373.239(2), F.S.

(b) The timeframes set forth in Rule 40E-1.603 shall apply to the processing of letter modifications.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.223, 373.229, 373.239 FS.

History — New 9-3-81, Formerly 16K-2.09(1), Amended 4-20-94, 7-11-96, 4-9-97, 12-10-97, 8-01-02.

40E-2.341 — Revocation of Permits.

Violations of this chapter may result in the revocation or suspension of the authorization in whole or in part in accordance with the provisions of Chapter 373, including Sections 373.119 and 373.243, F.S., Chapter 120, F.S., and Rules 40E-1.609, and 28-107.004, F.A.C.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.60(6), 373.103(4), 373.219, 373.229 FS.

History — New 4-20-94, Amended 7-2-98.

40E-2.351 — Transfer of Permits.

A permittee must comply with the requirements of Rule 40E-1.6107 in order to obtain a permit transfer to a new permittee. If the permit transfer is in conjunction with an application for permit modification, the permit shall be transferred at the time of permit modification if all applicable permit transfer criteria are met. Upon approval, all terms and conditions of the permit shall be binding on the transferee.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.223, 373.229, 373.239 FS.

History — New 9-3-81, Formerly 16K-2.09(2), Amended 4-20-94.

40E-2.381 — Limiting Conditions.

The Board shall impose on any permit granted under this part such reasonable standard and special permit conditions as are necessary to assure that the permitted use or withdrawal will be consistent with the overall objectives of the District, will not be harmful to the water resources of the District, is reasonable-beneficial, will not interfere with any presently existing legal uses, and is consistent with the public interest. Standard permit conditions in Section 5.1 of the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District”, incorporated by reference in Rule 40E-2.091 shall be set forth in the permit. Special permit conditions, including those specified in Section 5.2 of the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District” shall be set forth in the permit.

Specific Authority 373.044, 373.113, 373.171 FS.

Law Implemented 373.042, 373.0421, 373.219(1) FS.

History - New 9-3-81, Amended 2-24-85, 7-26-87, 4-20-94, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 8-01-02.

40E-2.441 — Temporary Permits.

The Board or the Executive Director may issue temporary water use permits under the provisions of Section 373.244, Florida Statutes.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.244 FS.

History — New 9-3-81, Amended 4-20-94.

40E-2.451 — Emergency Authorization.

(1) Permission to begin use, withdrawal, or diversion of water prior to the issuance of a permit may be applied for in writing, when emergency conditions exist which would justify such permission. However, no such permission shall be granted unless the use, withdrawal, or diversion is already being considered for a permit under Rule 40E-2.041. A serious set of unforeseen or unforeseeable circumstances must exist to create an emergency. Mere carelessness or lack of planning on the part of the applicant shall not be sufficient grounds to warrant the granting of emergency authorization.

(2) Emergency authorizations shall be administered pursuant to Rule 40E-1.6115, F.A.C.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.60(5), 373.219 FS.

History — New 9-3-81, Formerly 16K-2.11, Amended 4-20-94, 7-2-98.

40E-2.501 — Permit Classification.

Each water use permit shall be classified according to source, use and method of withdrawal. The source use and method of withdrawal classes are listed in Rules 40E-21.611 through 40E-21.691.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.246 FS.

History — New 9-3-81, Formerly 16K-2.12(2), Amended 7-4-82.

40E-2.511 — Declaration of Water Shortage.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.246 FS.

History — New 9-3-81, Formerly 16K-2.12(1), Repealed 5-30-82.

40E-2.521 — Change, Suspension or Restriction of Permits During Water Shortage.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.042, 373.246 FS.

History — New 9-3-81, Formerly 16K-2.12(3), (4), Repealed 5-30-82.

40E-2.531 — Procedures Under Water Shortage.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.246 FS.

History — New 9-3-81, Formerly 16K-2.13, Repealed 5-30-82.

40E-2.541 — Declaration of Emergency Due to Water Shortage.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.246(7) FS.

History — New 9-3-81, Formerly 16K-2.14, Repealed 5-30-82.

40E-2.551 — Procedures Under Emergency Due to Water Shortage.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.246(7) FS.

History — New 9-3-81, Formerly 16K-2.15, Repealed 5-30-82.